

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN RE: LITHIUM ION BATTERIES
ANTITRUST LITIGATION**

Case No.: 13-MD-2420 YGR

**ORDER GRANTING IN PART AND DENYING IN
PART, WITHOUT PREJUDICE, MOTION FOR
AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARDS**

This Order Relates to:
**ALL INDIRECT PURCHASER
ACTIONS**

DKT. NO. 1814

In connection with their motion for final approval of the class action settlement between Indirect Purchaser Plaintiffs ("IPPs" or "Plaintiffs") and defendants Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, "Hitachi"), NEC Corporation ("NEC"), and LG Chem, Ltd. and LG Chem America (collectively, "LG Chem"), IPPs have moved the Court for attorneys' fees, a portion of their litigation expenses, and service awards for the named class representatives as follows:

1. Award 25% of the total \$44,950,000 settlement to attorneys' fees in the amount of \$11,240,000;
 2. Reimbursement of a portion of litigation expenses incurred in the amount of \$4,159,515.28. The categories of litigation expenses for which Class Counsel seeks reimbursement are as follows:
 - a. payments made to expert economists;
 - b. payments made to vendors for document hosting services; and
 - c. payments made to vendors for the translation of foreign language documents; and
 3. service awards totaling \$34,500 (\$1,500 each for each Class Representative).
- (Dkt. No. 1814.)

The litigation in this action continues between IPPs and the remaining defendants. The total settlement amounts to date approach the characteristics of a so-called "megafund" case, in which a

1 fee amount approaching the 25 percent benchmark may result in a windfall. *See In re Bluetooth*
2 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“where awarding 25% of a
3 ‘megafund’ would yield windfall profits for class counsel in light of the hours spent on the case,
4 courts should adjust the benchmark percentage or employ the lodestar method instead”). Further,
5 the settlement with the Sony defendants has been approved, but no amount of attorneys’ fees was
6 determined in connection with that approval yet. Given these facts, the Court is not prepared to
7 make a full award of attorneys’ fees at this time.

8 However, IPPs’ counsel has litigated this action for several years, on a contingency basis
9 and at significant expense. IPPs are unquestionably entitled to some amount of attorneys’ fees
10 based upon the settlement agreements entered with Hitachi, NEC, and LG Chem. Thus, the Court
11 **GRANTS IN PART AND DENIES IN PART** the motion as follows:

12 (1) the Court **GRANTS** a partial attorney fee payment of **\$4,495,000.00**, *i.e.*, 10% of the
13 settlement fund from Hitachi, NEC, and LG Chem, to be offset from the final attorneys’ fee award
14 to IPPs’ counsel;

15 (2) the Court **DENIES** the request for an award of attorneys’ fees equal to 25% of the
16 common fund **WITHOUT PREJUDICE** to a further motion for additional attorneys’ fees;

17 (3) the request for payment of certain categories of litigation expenses incurred is **GRANTED**
18 **IN PART AND DENIED IN PART WITHOUT PREJUDICE**. The Court awards the requested
19 reimbursement of expenses for document repository/hosting services and document translation
20 services, in the total amount of **\$860,188.50**. The Court does not reach the question of the propriety
21 of the amounts or categories of the other expenses sought to be paid out of the common fund at this
22 time.¹ However, IPPs are reminded that they must offer sufficient evidence and authority for
23 awarding such expenses in connection with any renewed motion.

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26 ¹ The Court notes that the supplemental filing by IPPs, which provided summary
27 information for comparable settlements, did not (and was not required to) include information
28 sufficient to advise whether these types of expenses, the dollar amounts of which are significant,
were included in, or awarded separately from, the attorney fee awards in those cases. In connection
with any future requests for fees and expenses in this action, the Court will require this breakdown
of the information in comparable cases to be provided.

(4) the request for payment of service awards to the named class representatives in the total amount of **\$34,500.00** (\$1,500.00 each for each Class Representative) is **GRANTED**.

IT IS SO ORDERED.

This terminates Docket No. 1814.

Dated: October 27, 2017



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE